IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF FEBRUARY
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 19587 of 2004

Between:
Visakhapatnam Christian Cemeteries Board (Regn.No.18/64), Visakhapatnam rep. by its Secretary
T.Isaac, S/o.Abraham, R/o.9-25-5/3, C.B.M. Compound, Visakhapatnam-3.

..... PETITIONER

AND

1 The District Collector Visakhapatnam, Visakhapatnam District.
2 The Commissioner Municipal Corporation of Visakhapatnam Visakhapatnam, Visakhapatnam District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ of Mandamus or any other appropriate writ order or direction directing the respondents not to dispossess the petitioner Society from Regimental Lines Cemetery situated at Jagadamba Junction, Visakhapatnam, Visakhapatnam District by declaring the action of the Respondents in claiming the premises belonging to the Government as arbitrary, illegal and unconstitutional and pass.

Counsel for the Petitioner:MR.T.NIRANJAN REDDY

Counsel for Respondent No.1:

Counsel for Respondent No.2: Sri N.RANGA REDDY, STANDING COUNSEL FOR MUNICIPAL CORPORATION OF VISAKHAPATNAM

The Court made the following :

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19587 of 2007

ORDER:

This writ petition is filed for a writ of Mandamus to direct the respondents not to dispossess the petitioner Society from Regimental Lines Cemetery situated at Jagadamba Junction, Visakhapatnam by declaring the action of the respondents in claiming the premises as belonging to the Government, as arbitrary and illegal.

Heard Sri T.Niranjan Reddy, learned counsel for the petitioner, and Sri N.Ranga Reddy, learned Standing counsel for respondent No.2. No one appeared for respondent No.1.

The petitioner is a registered Society under the provisions of the Societies Registration Act with Registration No.18/1964. The petitioner claimed that the Cemetery Board was constituted with the object of serving the Christian Community by arranging burial of the dead and to preserve the cemeteries and the monuments contained therein from destruction. On 27.07.2004, respondent No.3 issued notification in the daily newspaper identifying the Christian cemetery (Regimental Line Cemetery) as one of the heritage sites (ancient and historical) within the Municipal Corporation limits. The said notification *inter alia* mentioned that the owners of the property should not make any additions or alterations without prior written permission from respondent No.2. The petitioner felt aggrieved by two signboards erected by order of District

Collector, Visakhapatnam mentioning therein that the said cemetery site belongs to Government of Andhra Pradesh (Heritage site).

No counter affidavits have been filed by the respondents.

From the notification, by which the Christian Cemetery (near Jagadamba) is notified as Heritage site, the Municipal Corporation of Visakhapatnam informed the property owners/ Government Institutions declared as heritage site/buildings that they should not make any additions or alterations without prior written permission from the Commissioner, Municipal Corporation of Visakhapatnam. Therefore, it is not permissible for the respondents to claim that the property is vested in the State Government and, therefore, it belongs to the Government. In the absence of any counter affidavit filed controverting the averments contained in the affidavit that the property is vested in the petitioner, the action of respondent No.1 in declaring the abovementioned property as belonging to the Government does not appear to be in conformity with law.

The writ petition is, accordingly, allowed. Respondent No.1 is directed to remove the two signboards showing the property as belonging to the Government. However, respondent No.2 is entitled to enforce the conditions stipulated in the notification by which the property is declared as a heritage site.

_____

C.V.NAGARJUNA REDDY,J

26.02.2009
v v